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1	COMMONWEALTH OF KENTUCKY
2	BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKYMAY 1 7 2013
3 4 5	In the Matter of: PUBLIC SERVICE COMMISSION
<i>5</i>	In the Matter of.
7 8 9 10	Application of Big Rivers Electric) Corporation for a General) Case No. 2012-00535 Adjustment in Rates)
11 12	PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL
13 14	PROTECTION
15	1. Big Rivers Electric Corporation ("Big Rivers") hereby petitions the Kentucky
16	Public Service Commission ("Commission"), pursuant to 807 KAR 5:001 Section 13 and KRS
17	61.878, to grant confidential protection to portions of a budget variance/financial report Big
18	Rivers is filing as an update to Tab 38 to its application in this matter. The information Big
19	Rivers seeks to protect as confidential is hereinafter referred to as the "Confidential
20	Information."
21	2. One (1) copy of the pages containing Confidential Information, with the
22	Confidential Information highlighted with transparent ink is being filed with this petition. A
23	copy of the pages containing Confidential Information, with the Confidential Information
24	redacted, is being filed with the original and each of the ten (10) copies of Big Rivers' updated
25	response to Tab 38 filed with this petition. 807 KAR 5:001 Sections 13(2)(a)(3), 13(2)(b).
26	3. A copy of this petition with the Confidential Information redacted has been served
27	on all parties to this proceeding. 807 KAR 5:001 Section 13(2)(c). A copy of the Confidential
28	Information has been served on all parties that have signed a confidentiality agreement.
29	4. The Confidential Information is not publicly available, is not disseminated within
30	Big Rivers except to those employees and professionals with a legitimate business need to know

- and act upon the information, and is not disseminated to others without a legitimate need to know and act upon the information.
- 5. If and to the extent the Confidential Information becomes generally available to the public, whether through filings required by other agencies or otherwise, Big Rivers will notify the Commission and have its confidential status removed. 807 KAR 5:001 Section

13(10)(a).

6. As discussed below, the Confidential Information is entitled to confidential protection based upon KRS 61.878(1)(c)(1), which protects "records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records." KRS 61.878(1)(c)(1); 807 KAR 5:001 Section 13(2)(a)(1).

I. Big Rivers Faces Actual Competition

- 7. Big Rivers competes in the wholesale power market to sell energy excess to its members' needs. Big Rivers' ability to successfully compete in the wholesale power market is dependent upon a combination of its ability to get the maximum price for the power sold, and keeping the cost of producing that power as low as possible. Fundamentally, if Big Rivers' cost of producing a kilowatt hour increases, its ability to sell that kilowatt hour in competition with other utilities is adversely affected.
- 8. Big Rivers also competes for reasonably priced credit in the credit markets, and its ability to compete is directly impacted by its financial results. Any event that adversely affects Big Rivers' margins will adversely affect its financial results and potentially impact the price it pays for credit. As was described in the proceeding before this Commission in the Big

1 Rivers unwind transaction case, Big Rivers expects to be in the credit markets on a regular basis 2 in the future.1

The Confidential Information is Generally Recognized as Confidential or II. **Proprietary**

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- 9. The Confidential Information for which Big Rivers seeks confidential treatment under KRS 61.878(1)(c)(1) is generally recognized as confidential or proprietary under Kentucky law.
- 10. The Confidential Information consists of information about Big Rivers' variable production costs and off-system sales volumes, and other information that if not granted confidential treatment could be used to calculate the Confidential Information.
- 11. Public Disclosure of the Confidential Information would reveal detailed information relating to Big Rivers' cost of producing power and the amount of power Big Rivers has available for off-system sales. Knowledge of such data will give Big Rivers' suppliers and competitors an unfair competitive advantage.
- Public disclosure of the variable production costs will give Big Rivers' suppliers, 12. buyers, and competitors insight into Big Rivers' cost of producing power, which would indicate the prices at which Big Rivers is willing to buy or sell power.
- 19 13. Information about a company's detailed inner workings is generally recognized as confidential or proprietary. See, e.g., Hoy v. Kentucky Indus. Revitalization Authority, 907 20 S.W.2d 766, 768 (Ky. 1995) ("It does not take a degree in finance to recognize that such 22 information concerning the inner workings of a corporation is 'generally recognized as confidential or proprietary""). Moreover, the Commission has previously granted confidential

¹ See Order dated March 6, 2009, in In the Matter of Joint Application of Big Rivers, E.ON, LG&E Energy Marketing, Inc., and Western Kentucky Energy Corporation for Approval to Unwind Lease and Power Purchase Transactions, PSC Case No. 2007-00455, pages 27-30 and 37-39.

- 1 treatment to similar information. See, e.g., two letters from the Commission dated December 11,
- 2 2012, in In the Matter of: Application of Big Rivers Electric Corporation for Approval of its
- 3 2012 Environmental Compliance Plan, for Approval of its Amended Environmental Cost
- 4 Recovery Surcharge Tariff, for Certificates of Public Convenience and Necessity, and for
- 5 Authority to Establish a Regulatory Account, PSC Case No. 2012-00063 (granting confidential
- 6 treatment to Big Rivers' O&M expenses, and off-system sales revenues). In fact, the
- 7 Commission has granted confidential treatment to the same type of information as the
- 8 Confidential Information that appeared in earlier budget variance reports. See Order dated May
- 9 6, 2013, in PSC Case No. 2013-00535.

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10 III. Disclosure of the Confidential Information Would Permit an Unfair Commercial Advantage to Big Rivers' Competitors

- 14. Disclosure of the Confidential Information would permit an unfair commercial advantage to Big Rivers' competitors. As discussed above, Big Rivers faces actual competition in the wholesale power market and in the credit market. It is likely that Big Rivers would suffer competitive injury if that Confidential Information was publicly disclosed.
- production costs. If that information is publicly disclosed, potential power suppliers and purchasers would have insight into the prices at which Big Rivers is willing to buy and sell power in the market, and they could manipulate the bidding process, leading to higher prices or lower revenues for Big Rivers and impairing its ability to compete in the wholesale power and credit markets. In PSC Case No. 2003-00054, the Commission granted confidential protection to bids submitted to Union Light, Heat & Power ("ULH&P"). ULH&P argued, and the Commission implicitly accepted, that-if the bids it received were publicly disclosed, contractors on future work could use the bids as a benchmark, which would likely lead to the submission of

- higher bids. Order dated August 4, 2003, in In the Matter of: Application of the Union Light,
- 2 Heat and Power Company for Confidential Treatment, PSC Case No. 2003-00054. The
- 3 Commission also implicitly accepted ULH&P's further argument that the higher bids would
- 4 lessen ULH&P's ability to compete with other gas suppliers. *Id.* Similarly, potential power
- 5 suppliers and purchasers manipulating Big Rivers' bidding process would lead to higher costs or
- 6 lower revenues to Big Rivers and would place it at an unfair competitive disadvantage in the
- 7 wholesale power market and credit markets.
 - sales volumes would give the power producers and marketers with which Big Rivers competes in the wholesale power market insight into Big Rivers' cost of producing power and the amount of power Big Rivers has to sell into the market. Knowledge of this information would give those power producers and marketers an unfair competitive advantage because they could use that information to potentially underbid Big Rivers in wholesale transactions. It would also give potential suppliers to Big Rivers a competitive advantage because they will be able to manipulate the price of power bid to Big Rivers in order to maximize their revenues, thereby driving up Big Rivers' costs and impairing Big Rivers' ability to compete in the wholesale power and credit markets.

18 IV. Time Period

17. Big Rivers requests that the Confidential Information remain confidential for a period of five (5) years from the date of this petition, which should allow sufficient time for the Confidential Information to become sufficiently outdated that it could not be used to determine similar confidential information at that time. 807 KAR 5:001 Section 13(2)(a)(2).

V. Conclusion

protection. If the Commission disagrees that Big Rivers is entitled to confidential protection, due process requires the Commission to hold an evidentiary hearing. Utility Regulatory Com'n v. Kentucky Water Service Co., Inc., 642 S.W.2d 591 (Ky. App. 1982). WHEREFORE, Big Rivers respectfully requests that the Commission classify and protect as confidential the Confidential Information. On this the 16 th day of May, 2013. Respectfully submitted, Miller Tyson Kamuf SULLIVAN, MOUNTJOY, STAINBACK MILLER, P.S.C. 100 St. Ann Street P. O. Box 727 Owensboro, Kentucky 42302-0727 Phone: (270) 926-4000 Facsimile: (270) 683-6694 jmiller@smsmlaw.com tkamuf@smsmlaw.com tkamuf@smsmlaw.com Edward T. Depp Dinsmore & Shohl LLP 101 South Fifth Street Suite 2500 Louisville, KY 40202 Phone: (502) 540-2347 Facsimile: (502) 540-2347 Facsimile: (502) 545-2207 tip.depp@dinsmore.com	1	18. Based on the foregoing, the Confidential Information is entitled to confidential
WHEREFORE, Big Rivers respectfully requests that the Commission classify and protect as confidential the Confidential Information. On this the 16 th day of May, 2013. Respectfully submitted, James M. Miller Tyson Kamuf SULLIVAN, MOUNTJOY, STAINBACK & MILLER, P.S.C. 100 St. Ann Street P. O. Box 727 Owensboro, Kentucky 42302-0727 Phone: (270) 926-4000 Facsimile: (270) 683-6694 jimille@smsmlaw.com tkamuf@smsmlaw.com Edward T. Depp Dinsmore & Shohl LLP Dinsmore & Shohl LLP LP LP LOSON To St.	2	protection. If the Commission disagrees that Big Rivers is entitled to confidential protection, due
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7 On this the 16 th day of May, 2013. 8 Respectfully submitted, 9 10 11 12 James M. Miller 13 Tyson Kamuf 14 SULLIVAN, MOUNTJOY, STAINBACK & MILLER, P.S.C. 16 100 St. Ann Street 17 P. O. Box 727 18 Owensboro, Kentucky 42302-0727 19 Phone: (270) 926-4000 20 Facsimile: (270) 683-6694 21 jmiller@smsmlaw.com 22 tkamuf@smsmlaw.com 23 tkamuf@smsmlaw.com 24 Edward T. Depp 26 Dinsmore & Shohl LLP 27 101 South Fifth Street 28 Suite 2500 29 Louisville, KY 40202 29 Phone: (502) 540-2347 31 Facsimile: (502) 585-2207 32 tip.depp@dinsmore.com 33 34 35 Counsel for Big Rivers Electric Corporation 36 37 38 Certificate of Service	5	WHEREFORE, Big Rivers respectfully requests that the Commission classify and protect
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## MILLER, P.S.C. ## MILLER, P.S.C. ## MILLER, P.S.C. ## P. O. Box 727 ## Owensboro, Kentucky 42302-0727 ## Owensboro, Kentucky 42302-0727 ## Owensboro, Kentucky 42302-0727 ## Owensboro, Kentucky 42302-0727 ## Phone: (270) 926-4000 ## Facsimile: (270) 683-6694 ## jmiller@smsmlaw.com ## tamuf@smsmlaw.com ## Edward T. Depp ## Dinsmore & Shohl LLP ## Dinsmore & Shohl LLP ## 101 South Fifth Street ## Suite 2500 ## Louisville, KY 40202 ## Douisville, KY 40202 ## Douisville, KY 40202 ## Phone: (502) 540-2347 ## Facsimile: (502) 585-2207 ## Tacsimile: (50		· · · · · · · · · · · · · · · · · · ·
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1	I certify that a true and accurate copy of the foregoing was served by Federal Express or
2	by first class mail, postage prepaid upon the persons listed on the service list that accompanies
3	this petition, on this the 16th day of May, 2013.
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7	Tyson Kamuf